

RECEIVED

FEB 22 1993

Before the  
Federal Communications Commission  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of ) MM Docket No. 92-306  
 )  
Request by Press Broadcasting ) RM-7994  
Company, Inc. to Amend )  
Section 76.51 of the )  
Commission's Rules to )  
Include Clermont, Florida, in )  
the Orlando-Daytona Beach- )  
Melbourne-Cocoa, Florida, )  
Television Market )

To: The Commission

COMMENTS IN SUPPORT

Sharp Communications, Inc. ("Sharp"), licensee of  
Television Station WACX, Channel 55, Independent, Leesburg-  
Orlando, Florida, by its counsel, hereby submits its  
"Comments in Support" of the Notice of Proposed Rule Making  
("Notice") in the above-captioned matter, released by the  
Commission on December 31, 1992 (FCC 92-561).<sup>1</sup>

Discussion

In its Notice, the Commission proposes to add Clermont,  
Florida, to the top-100 Orlando-Daytona Beach-Melbourne-  
Cocoa, Florida, television market, ranked 55, pursuant to  
Commission Rule 76.51 (47 C.F.R. § 76.51).

Sharp submits that Press Broadcasting Company, Inc.  
("Press"), licensee of WKCF(TV), Channel 68, Independent,

---

<sup>1</sup>In the Notice, the Commission established February 22, 1993  
as the comment date. Accordingly, the instant comments are  
timely filed.

Clermont, Florida, has, beyond peradventure, established its case for inclusion in the Orlando market. The criteria delineated by the Commission in the Notice as well as in the precedent-setting Fresno-Visalia proceeding (57 RR 2d 122 (1985)) makes abundantly clear that the equities lie strongly on the side of Press in its efforts to be added to the market.

Further, Sharp requests that the Commission expand the instant proceeding to include Leesburg, Florida, as part of the same market at issue herein. As a procedural matter, Sharp submits that the Commission has authority to include Leesburg, in accordance with the controlling mandate of the relevant portion of the Administrative Procedure Act (5 U.S.C. § 553). The Commission's Notice meets the APA requirement that an agency give advance warning of proposed rule making by publishing its notice, including "either the terms of substance of the proposed rule or a description of the subject and issues involved." 5 U.S.C. § 553(b)(3). What the Act does not require is that the Commission must publish every precise proposal which it may ultimately adopt in a rule.<sup>2</sup> In its Notice herein, the Commission has enunciated the position that stations meeting certain criteria in the Orlando market would appear to be eligible for inclusion therein. Admittedly, Leesburg (and WACX) were

---

<sup>2</sup>Accord, California Citizens Band Association v. United States, 375 F.2d 43, 48 (9th Cir. 1967); Spartan Broadcasting Co. v. FCC, 619 F.2d 314 (1980).

not specifically mentioned, but their inclusion is reasonably inferred.

Affixed hereto as Attachment 1, is a map prepared by Neil S. Atkinson, Jr., of River Rock Consultants, Inc., Sneads, Florida, delineating the various mileages between the affected communities in this market. The distances between Leesburg and Daytona Beach, Orlando, Cocoa, Melbourne and Clermont, are clearly shown. Significantly, Clermont is less than 20 miles from Leesburg, and in point of fact, Leesburg is approximately five miles closer to Daytona Beach than is Clermont. (The distances between the communities in the market, assuming the inclusion of Leesburg, are also charted in Attachment 2.)

Of perhaps equal if not greater significance is Attachment 3, delineating WACX' Grade B contour, which covers each of the communities in the market -- Orlando-Daytona Beach-Clermont-Cocoa -- except Melbourne, which is a very few miles beyond WACX' Grade B contour. Clearly, WACX is a part of the Orlando-Daytona Beach-Melbourne-Cocoa market, and is competing therein. In its Cable Television Report and Order (36 FCC 2d 143, 176 1972), the Commission acknowledged the need to equalize the competitive status where stations are in economic competition. For the same reasons that the Commission has been forbearing toward WKCF in terms of granting it relief to allow it to obtain expanded program protection as well as enhanced copyright

status for cable carriage purposes, WACX is in urgent need of the same relief.

With regard to expanded cable carriage, if Leesburg is made a part of this market, cable systems in the vicinity of Melbourne will have an opportunity to carry WACX without concern for adverse financial implications because of copyright obligations. But in the main, adding Leesburg to the market will enhance its cable carriage opportunities only in areas where it is providing a strong and viewable signal at the present time. The ability of an additional broadcast service to be made available to cable subscribers who are now deprived of it because of copyright restrictions will be in the clearest public interest of fostering expanded and increased program choices for viewers in this area (see Communications Act of 1934, Section 307).

As for the particularized need of WACX to obtain the relief it seeks herein, the Commission can take official notice of the circumstances facing a small market UHF television stations such as WACX. That is particularly true where the station is a religious/family stations, seeking to provide wholesome programming to its viewers. WACX is in competition with other market stations for portions of its programming, and is in need of the same historic and

prospective consideration that the Commission has and will extend to WKCF(TV) in Clermont.<sup>3</sup>

Wherefore, in light of the above showing, the Commission is respectfully requested to add Clermont to the Orlando market and to expand its pending rule making to add Leesburg to the Orlando-Daytona Beach-Melbourne-Cocoa-Clermont market, so that it will become the Orlando-Daytona Beach-Melbourne-Cocoa-Clermont-Leesburg market.

Respectfully submitted,

SHARP COMMUNICATIONS, INC.

By: 

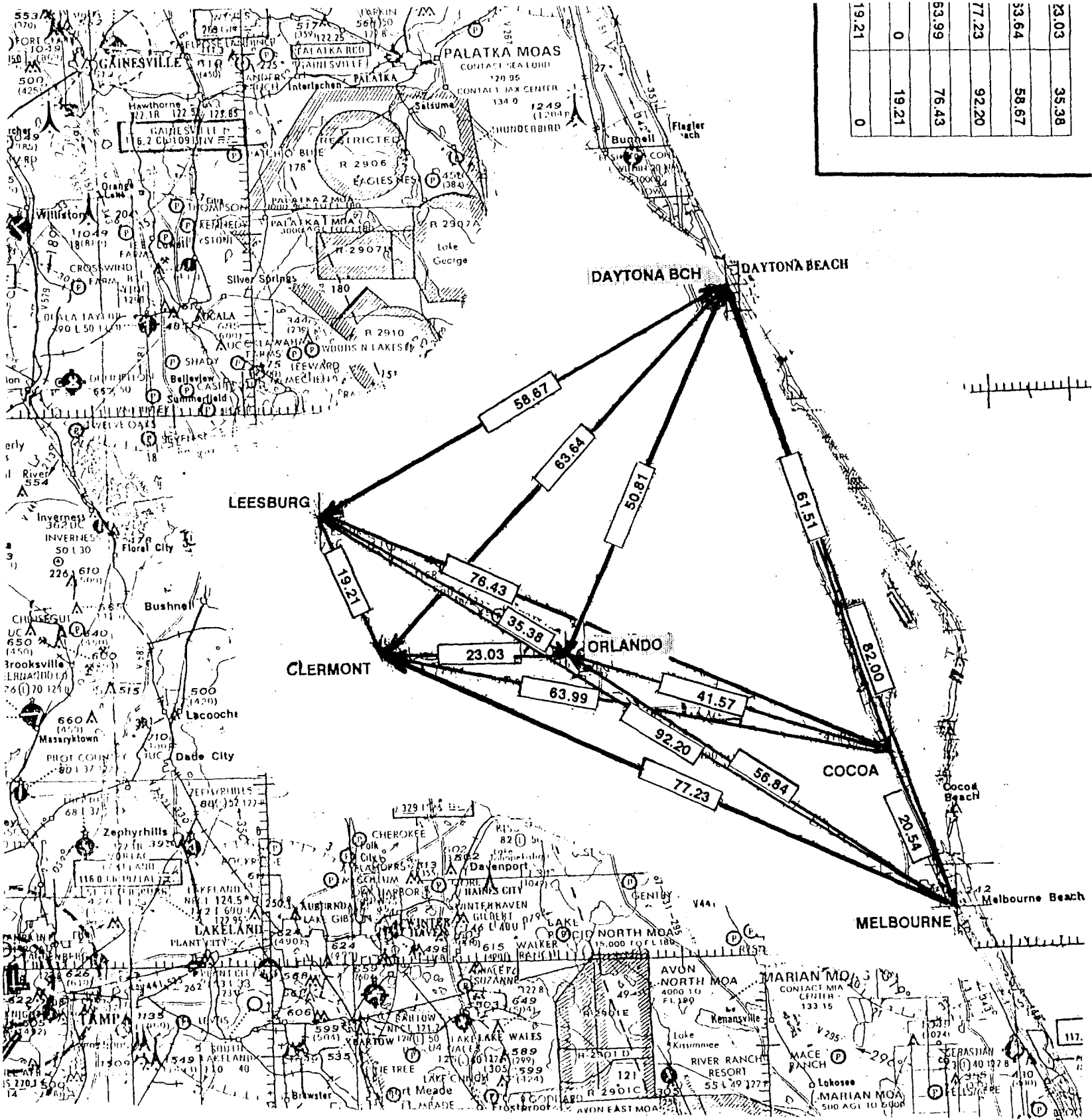
James A. Koerner  
Its Attorney

Baraff, Koerner, Olender  
& Hochberg, P.C.  
5335 Wisconsin Avenue, N.W.  
Suite 300  
Washington, D. C. 20015

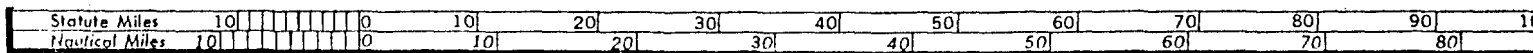
---

<sup>3</sup>Should the Commission feel that it is restricted from the Commission dealing with Sharp's request in this proceeding, then the Commission is requested, sua sponte, to keep this proceeding open and to issue a Further Notice of Proposed Rule Making dealing with the addition of Leesburg to the market.

**ATTCHMENT A**



# FLORIDA AERONAUTICAL CHART



ATTCHMENT B



# **DISTANCE TABLES**

<b>POINT OF REFERENCE</b>	<b>N. LAT</b>	<b>W. LON</b>
<b>WACX XMTR SITE</b>	<b>28 55 16</b>	<b>81 19 09</b>
<b>CITY ORLANDO</b>	<b>28 32 42</b>	<b>81 22 38</b>
<b>CITY DAYTONA BCH</b>	<b>29 12 44</b>	<b>81 01 10</b>
<b>CITY MELBOURNE</b>	<b>28 04 41</b>	<b>80 36 29</b>
<b>CITY COCOA</b>	<b>28 21 24</b>	<b>80 43 42</b>
<b>CITY CLERMONT</b>	<b>28 33 13</b>	<b>81 45 21</b>
<b>CITY LEESBURG</b>	<b>28 48 43</b>	<b>81 52 30</b>

## **DISTANCE REFERENCE IN MILES**

**ORLANDO DAY BCH MELBOURNE COCOA CLERMONT LEESBURG**

<b>ORLANDO</b>	<b>0</b>	<b>50.81</b>	<b>56.84</b>	<b>41.57</b>	<b>23.03</b>	<b>35.38</b>
<b>DAYTONA BCH</b>	<b>50.81</b>	<b>0</b>	<b>82.00</b>	<b>61.51</b>	<b>63.64</b>	<b>58.67</b>
<b>MELBOURNE</b>	<b>56.84</b>	<b>82.00</b>	<b>0</b>	<b>20.54</b>	<b>77.23</b>	<b>92.20</b>
<b>COCOA</b>	<b>41.57</b>	<b>61.51</b>	<b>20.54</b>	<b>0</b>	<b>63.99</b>	<b>76.43</b>
<b>CLERMONT</b>	<b>23.03</b>	<b>63.64</b>	<b>77.23</b>	<b>63.99</b>	<b>0</b>	<b>19.21</b>
<b>LEESBURG</b>	<b>35.38</b>	<b>58.67</b>	<b>92.20</b>	<b>76.43</b>	<b>19.21</b>	<b>0</b>

ATTACHMENT C

**CERTIFICATE OF SERVICE**

I, Frances B. Brock, a secretary in the law offices of Baraff, Koerner, Olender & Hochberg, P.C., certify that on this 22nd day of February, 1992, a copy of the foregoing "Comments in Support" were sent by first-class, United States Mail, postage prepaid, to each of the following:

Television Station WKCF  
602 Courtland Street  
Suite 200  
Orlando, Florida 32804

Television Station WOFL  
35 Skyline Drive  
Lake Mary, Florida 32746

Television Station WIRB  
400 Beach Road  
Suite 245  
Vero Beach, Florida 32963

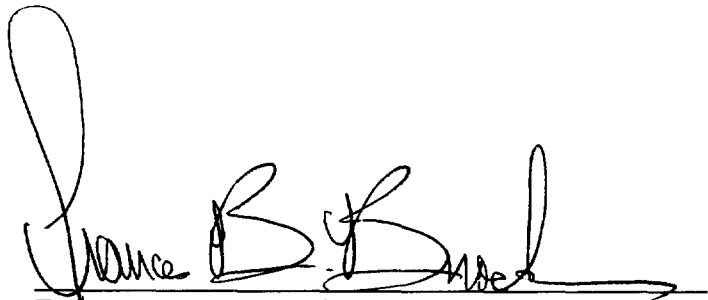
Television Station WFTV  
Box 999  
Orlando, Florida 32802

Television WESH  
Box 547697  
Orlando, Florida 32854

Television Station WCPX-TV  
Box 606000  
Orlando, Florida 32860

Television Station WBSF  
c/o Blackstar Communications, Inc.  
1818 N Street, N. W.  
Washington, D.C. 20036

Television Station WTGL  
Box 1852  
Cocoa, Florida 32922-1852



Frances B. Brock

**BARAFF, KOERNER, OLENDER & HOCHBERG, P.C.**

ATTORNEYS AT LAW

5335 WISCONSIN AVENUE, N.W., SUITE 300  
WASHINGTON, D.C. 20015-2003

(202) 686-3200

B. JAY BARAFF  
ROBERT L. OLENDER  
JAMES A. KOERNER  
PHILIP R. HOCHBERG  
AARON P. SHAINIS  
LEE J. PELTZMAN  
MARK J. PALCHICK  
JAMES E. MEYERS

OF COUNSEL  
ROBERT BENNETT LUBIC

FAX: (202) 686-8282

February 22, 1993

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N. W.  
Washington, D. C. 20554

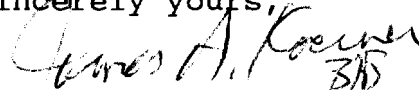
Re: MM Docket No. 92-306  
RM-7994

Dear Ms. Searcy:

On behalf of Sharp Communications, Inc., we hand you herewith an original and four copies of its "Comments in Support" in the above-referenced proceeding.

Kindly communicate with the undersigned should any question arise relative to this matter.

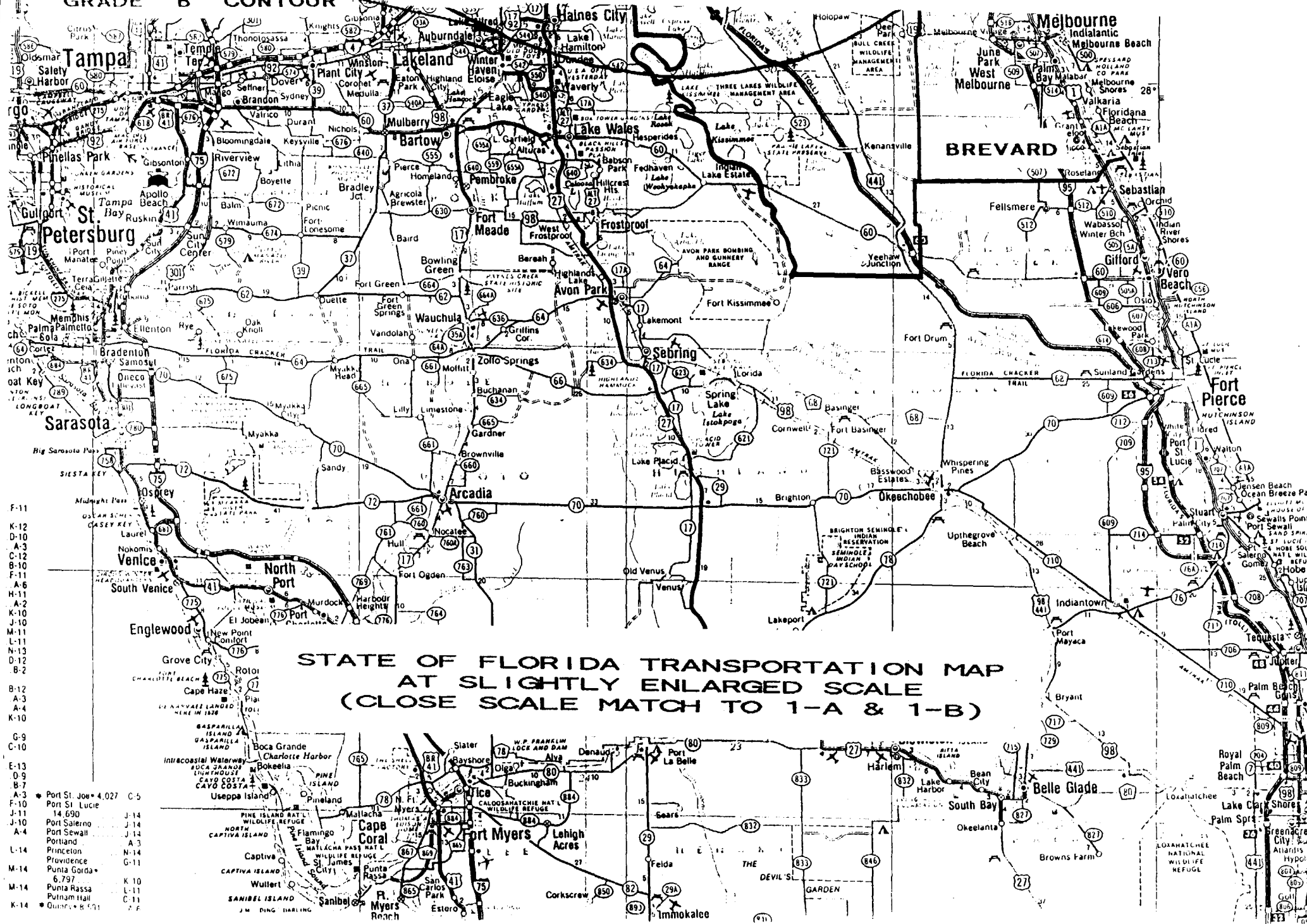
Sincerely yours,



James A. Koerner  
Counsel for  
Sharp Communications, Inc.

Enclosures

044



STATE OF FLORIDA MAP SHOWING ORLANDO-DAYTONA  
BEACH-MELBOURNE ADI/METRO MARKET COUNTIES  
AND APPROXIMATE WACX TV-55 GRADE "B" COVERAGE  
CONTOUR.

